

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District WESTERN DISTRICT OF TENNESSEE
Name of Movant DIMITAR PETLECHKOV	Prisoner No. 30534-076	Case No. 17-CR-20344
Place of Confinement WTDF - MASON, TN 38049		

UNITED STATES OF AMERICA

V.

DIMITAR PETLECHKOV
(name under which convicted)

MOTION

- Name and location of court which entered the judgment of conviction under attack
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, MEMPHIS DIVISION
167 NORTH MAIN STREET, MEMPHIS TN 38103
- Date of judgment of conviction 4/4/2018
- Length of sentence UNKNOWN
- Nature of offense involved (all counts)
18 U.S.C. Section 1341 (Mail Fraud)

RECEIVED
 19 JUL 22 PM 2:53
 THOMAS M. GOULD
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF TENNESSEE

- What was your plea? (Check one)

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

- If you pleaded not guilty, what kind of trial did you have? (Check one)

<input checked="" type="checkbox"/>
<input type="checkbox"/>
- Did you testify at the trial?
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court SIXTH CIRCUIT COURT OF APPEALS

(b) Result Conviction affirmed as to counts 6, 13, 19; conviction dismissed as to counts 1-5, 7-12, 14-18, 20.

(c) Date of result May 1, 2019

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(b) As to any second petition, application or motion give the same information:

(1) Name of court

(2) Name of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one:

Denial of US Constitution Sixth Amendment right to effective assistance of trial counsel by failure to impeach key witness with grossly inconsistent and more favorable prior statements, where witness's testimony was devastatingly inculpatory, the need to impeach compelling, and but for counsel's error, finding of reasonable doubt was probable.

Supporting FACTS (state *briefly* without citing cases or law):

The government's case rested entirely on the testimony of its star witness, Andrew Newbon. It was required to prove that defendant's single misrepresentation of being a vendor to General Dynamics in order to receive discounted rates was material. Mr Newbon provided the critically damaging testimony that rendered defendant's misrepresentation material. However, that testimony was demonstrably false. Firstly, Mr Newbon committed perjury by testifying that FedEx routinely provided vendors with national discounts if they asked. Secondly, he perjured himself when he testified he discovered the alleged "fraud scheme" because defendant called to complain about missing discounts. Mr Newbon's (false) testimony was central to the issue of determining defendant's guilt. Inexplicably, defense counsel failed to use 6 pieces of available exculpatory documentary evidence and grossly inconsistent prior statements to impeach Mr Newbon's credibility on cross-examination. (See Page 7). As a result, the devastating inculpatory testimony remained virtually unchallenged and the jury retired with a false impression of the case. This was an egregious error by defense counsel that constitutes deficient performance and it was obviously prejudicial.

B. Ground two:

N/A

Supporting FACTS (state *briefly* without citing cases or law):

C. Ground three:

N/A

Supporting FACTS (state *briefly* without citing cases or law):

D. Ground four:

N/A

Supporting FACTS (state *briefly* without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

Generally, the Sixth Circuit will not entertain ineffective assistance of counsel claims on direct appeal because the record is not sufficiently developed to permit meaningful appellate review.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

Michael J Stengel
619 South Cooper Street
Memphis, TN 38104

(b) At arraignment and plea

Michael J Stengel
619 South Cooper Street
Memphis, TN 38104

(c) At trial

Michael J Stengel
619 South Cooper Street
Memphis, TN 38104

(d) At sentencing

Michael J Stengel
619 South Cooper Street
Memphis, TN 38104

- (e) On appeal
Michael J Stengel
619 South Cooper Street
Memphis, TN 38104
- (f) In any post-conviction proceeding
N/A

- (g) On appeal from any adverse ruling in a post-conviction proceeding
N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

- (a) If so, give name and location of court which imposed sentence to be served in the future:

- (b) Give date and length of the above sentence:

- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

N/A

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

7/19/2019

Date

s/ Dimitar Petlechkov

Signature of Movant